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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,626	06/26/2006	Kazuhito Niwano	292367US2PCT	8461

22850 7590 12/16/2010  
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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KAVLESKI, RYAN C

ART UNIT	PAPER NUMBER
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2475

NOTIFICATION DATE	DELIVERY MODE
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12/16/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/584,626	<b>Applicant(s)</b> NIWANO, KAZUHITO	
	<b>Examiner</b> Ryan C. Kavleski	<b>Art Unit</b> 2475	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Amendments***

1. This communication is in response to Applicant's reply filed under 3 CFR 1.111 on 10/13/2010. Claim 18 was amended and claim 18 remains pending.

***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 11/30/2009 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (US Pub 2004/0192308)(Lee hereafter).**

Regarding claim 18, Lee teaches a communication method having a variable modulation method (the system uses adaptive modulation and coding and HARQ)[paragraph 0046] comprising:

a requesting step of transmitting a signal, from a mobile station to a base station [refer Fig. 2; 202], requesting data transmission from a mobile station (user equipment

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(UE))[refer Fig. 2; 112] to a base station [refer Fig. 2; 110] when there is data to be transmitted from the mobile station to the base station (the user equipment, after establishing EUDCH, transmits channel condition information that is required for scheduling data when the UE has data to send to a base station)[paragraph 0010];

a notifying step of transmitting a signal from the base station to the mobile station [refer Fig. 2; 204] notifying the data transmission, when receiving the signal requesting data transmission (the UE sends control information to the base station to provide information for the data transmission, such as OVSF code, modulation, data size and HARQ)[paragraph 0010];

a data transmission step of transmitting the data [refer Fig. 2; 207] to be transmitted from the mobile station to the base station when receiving the signal notifying the data transmission (the data transmission occurs after the the data rate has been assigned by Node B)[paragraph 0010]; and

a retransmission notifying step of transmitting a signal [refer Fig. 2; 209] representing whether the transmitted data is to be retransmitted or not (the base station sends a ACK or NACK back to the UE, in which a NACK prompts a retransmission of the data)[paragraph 0012], when the signal representing an instruction to retransmit the data is transmitted, the data is retransmitted from the mobile station to the base station with a same modulation method (i.e. coding rate) as one used for the data transmission (in implementing the improved HARQ over existing procedures [paragraph 0045], the system, when using HARQ, allows a transmitter to perform an initial transmission and a

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retransmission using **the same format**, allowing the same coding rate to be applied for the initial transmission and the retransmission [paragraph 0049]).

However, Lee's disclosure of the EUDCH establishment procedures are described as procedures described in another embodiment as related art, in which Lee's adaptive modulation methods are an improved HARQ scheme for uplink procedures to be used for EUDCH [paragraph 0045].

It would have been obvious to one of ordinary skill in the art given the disclosure of Lee of the EUDCH establishment procedures as known in the art to combine with Lee's improved HARQ scheme that is to be implemented using an EUDCH for uplink communications. One would be motivated to do so to provide the combination of prior art elements according to known methods to obtain predictable results [refer paragraph 0020 and 0045].

### ***Response to Arguments***

1. Applicant's arguments filed 10/13/2010 have been fully considered but they are not persuasive.
2. Regarding claim 18, applicant argues that the applied reference does not teach the claim limitations, namely, "a requesting step of transmitting a signal from a mobile station to a base station", "a notifying step of transmitting a signal, from the base station to the mobile station" and "the data is retransmitted from the mobile station to the base station with a same modulation method as one used for the data transmission".

In response to the above-mentioned argument, examiner respectively disagrees. As indicated in the above rejection, given the broadest reasonable interpretation of the current claim language in view of the prior art, as required by MPEP 2111, a signal being transmitted from a mobile station to a base station to request data transmission can be seen as the signaling step shown in Fig. 2 of Lee, step 202, where information is transmitted to Node B from the UE so that the base station can perform scheduling for the mobile station's data transmission and use the information to perform data rate assignment [paragraph 0010]. Furthermore, the notifying step can be seen as the signaling step shown in Fig. 2, step 204, where Node B sends the assigned data rate and modulation scheme to the UE so the UE can transmit the data to Node B in step 207 [paragraph 0010]. Accordingly, the establishment steps 202 and 204 shown and taught by Lee can be reasonably seen as the requesting and notifying steps respectively as amended by the applicant.

Furthermore, with regards to the applicant's arguments that Lee fails to disclose "data is retransmitted from the mobile station to the base station with a same modulation method as one used for the data transmission," given the broadest reasonable interpretation of the claim limitation, "modulation method", the disclosure of Lee of retransmitting using the same coding rate that was applied for the initial transmission and the retransmission can be seen as the same modulation method when it is stated that the retransmission is to share the **same format** as an initial transmission [paragraph 0049] taught by Lee, since a modulation method can be seen as any type of modification or adjustment to a data transmission.

***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan C. Kavleski whose telephone number is 571-270-3619 and fax number is 571-270-4619. The examiner can normally be reached on Mon-Fri 7:30am - 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dang T. Ton can be reached on 571-272-3171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ryan Kavleski  
/R. C. K./  
Examiner, Art Unit 2475

/DANG T TON/  
Supervisory Patent Examiner, Art Unit 2475/D. T. T./  
Supervisory Patent Examiner, Art Unit 2475